

FILED

FEB 3 2007

U.S. DISTRICT COURT
MARTINSBURG, WV 26101

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
MARTINSBURG

UNITED STATES OF AMERICA,

Plaintiff,

v.

CRIMINAL NO. 3:02CR31-1
(STAMP)

CALVIN LEROY BROWN, JR.,

Defendant.

REPORT AND RECOMMENDATION ON PETITION TO REVOKE SUPERVISED
RELEASE

On September 9, 2006, the defendant's supervising probation officer, Kenneth Reid, filed a petition to revoke the defendant's supervised release (Doc. 41) alleging that the defendant violated the terms of his supervised release by committing another federal, state, or local crime.

On January 17, 2007, the undersigned conducted a hearing on the petition. At the hearing, the United States presented evidence establishing that the defendant was arrested for Obstructing an Officer and Driving Under Suspension on August 30, 2007. In response, the defendant, though not presenting evidence, addressed the Court in a statement detailing his version of the August 30, 2006 events.

In addition to the factual basis of the alleged violation, the Court noted that on March 8, 2006 it had imposed a twelve month and one day suspended sentence for prior violations of supervised

release. After careful consideration of the above, this Court recommends the following finds of fact based upon clear and convincing proof:

1. That there is a preponderance of evidence establishing that the defendant violated a mandatory condition of supervised release by committing another state or local crime.

Therefore, the undersigned respectfully recommends as follows:

1. That the defendant's supervised release be revoked and the twelve month and one day suspended sentence be reinstated.
2. That the defendant be given credit for time served from November 3, 2006, which occurred in relation to the violation contained in the probation officer's petition.
3. That no term of supervised release follow the service of the defendant's sentence.

It is so **ORDERED**.

Any party may, within ten (10) days after being served with a copy of this Report and Recommendation, file with the Clerk of the Court written objections identifying the portions of the Report and Recommendation to which objection is made, and the basis for such objection. A copy of such objections should also be submitted to the Honorable Irene M. Keeley, Chief United States District Judge. Failure to timely file objections will result in waiver of the

right to appeal from a judgment of this Court based upon such report and recommendation. 28 U.S.C. §636(b)(1); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984), cert. denied, 467 U.S. 1208 (1984); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); Thomas v. Arn, 474 U.S. 140 (1985).

The Clerk is directed to transmit true copies of this Report and Recommendation to the defendant and all counsel of record herein.

DATED this 7th day of February, 2007.



DAVID J. JOEL
UNITED STATES MAGISTRATE JUDGE